

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 REGINA H. FLORENCE,)
4)

5 Plaintiff,)

6 vs.)

Case No.: 2:16-cv-0587-GMN-NJK

ORDER

7 CENLAR FEDERAL SAVINGS & LOAN;)
8 SELECT PORTFOLIO SERVICING, INC.;)
9 SHELLPOINT MORTGAGE SERVICING;)
10 EXPERIAN INFORMATION SOLUTIONS,)
11 INC.,)

12 Defendants.)
13)

14 WILLIAM E. FLORENCE,)
15)

16 Plaintiff,)

17 vs.)
18)

19 REALTIME RESOLUTIONS INC;)
20 SHELLPOINT MORTGAGE SERVICING;)
21 STATE FARM BANK; CENLAR FEDERAL)
22 SAVINGS & LOAN; COMMONWEALTH)
23 FINANCIAL SYSTEMS; PLUSFOUR)
24 (SOUTHWEST MEDICAL); SELECT)
25 PORTFOLIO SERVICING; EQUIFAX)
INFORMATION SERVICES, LLC,)
EXPERIAN INFORMATION SOLUTIONS,)
INC.,)

Defendants.)
)

23 Pending before the Court is the Motion for Partial Summary Judgment, (ECF No. 161),
24 and the sealed, unredacted Motion for Partial Summary Judgment, (ECF No. 162), filed by
25 Plaintiff William E. Florence, (“Mr. Florence”). Defendant Experian Information Solutions,

1 Inc., (“Experian”) filed a Response, (ECF No. 167), and Mr. Florence filed a Reply, (ECF No.
2 169).

3 Also pending before the Court is the Motion for Partial Summary Judgment, (ECF No.
4 163), and the sealed, unredacted Motion for Partial Summary Judgment, (ECF No. 164), filed
5 by Plaintiff Regina H. Florence, (“Mrs. Florence”) (collectively “Plaintiffs”). Experian filed a
6 Response, (ECF No. 165), and Mrs. Florence filed a Reply, (ECF No. 170).

7 Also pending before the Court are the Motions for Summary Judgment, (ECF Nos. 171,
8 172), filed by Experian against Plaintiffs. Plaintiffs filed Responses, (ECF Nos. 173, 175), and
9 Experian filed Replies, (ECF Nos. 176, 178).

10 **I. BACKGROUND**

11 This case arises out of allegations that Experian, a credit reporting agency (“CRA”),
12 falsely reported negative and inaccurate information on its credit reports after Plaintiffs’ debts
13 had been discharged in bankruptcy. (Mrs. Florence’s Compl., ECF No. 1); (Mr. Florence’s
14 Compl., 2:16-cv-0692-GMN-NJK, ECF No. 1). Specifically, Plaintiffs filed Chapter 13
15 bankruptcy on April 27, 2012. (Mrs. Florence’s Mot. for Summ. J. (“MSJ”) 2:19–20, ECF No.
16 163)¹; (*see* Bankr. Case, 12-13518-MKN); (Bankr. Pet., Ex. 1 to Mrs. Florence’s MSJ, ECF
17 No. 163-3) (hereinafter the “Bankruptcy” or “Bankruptcy Petition”). In the Bankruptcy,
18 Plaintiffs had three accounts in common that were rectified: the Shellpoint account, the Select
19 Portfolio Servicing (“SPS”) account, and the Cenlar account (collectively the “mortgage
20 accounts”).

21 Concerning the Shellpoint account, Plaintiffs state that the Schedule D of their
22 Bankruptcy Petition (the “Petition”) listed the mortgage with Shellpoint for their property
23 located at 7922 Lookout Rock Circle, Las Vegas, Nevada 89129. (Bankr. Pet. at 21, Ex. 1 to
24

25 ¹ Where Mrs. Florence’s Motion for Summary Judgment and Mr. Florence’s Motion for Summary Judgment are identical, the Court will only cite to Mrs. Florence’s, (ECF No. 163).

1 Mrs. Florence's MSJ). On May 3, 2013, the bankruptcy court entered its order confirming
2 Plaintiffs' Chapter 13 Plan of Reorganization (the "Confirmed Plan"). (Confirmed Plan, Ex. 5
3 to Mrs. Florence's MSJ, ECF No. 163-6). Pursuant to the Confirmed Plan, on November 25,
4 2013, Plaintiffs had completed all payments that pertained to the Shellpoint account. (Ex. 6 to
5 Mrs. Florence's MSJ, ECF No. 163-7).

6 Regarding the SPS account, Plaintiffs state that the Schedule D of their Petition listed
7 the mortgage with SPS for their property located at 5508 Big Sky Lane, Las Vegas, Nevada
8 89145 (the "Big Sky property"). (Bankr. Pet. at 22, Ex. 1 to Mrs. Florence's MSJ). Pursuant to
9 the Confirmed Plan, Plaintiffs surrendered the Big Sky property in payment of its debt, and all
10 payments were received during the Confirmed Plan payment period. (Ex. 6 to Mrs. Florence's
11 MSJ, ECF No. 163-7). As to the Cenlar account, Cenlar was the second mortgage taken out on
12 the Big Sky property. In surrendering the Big Sky property, the Cenlar account received
13 payment of its debt pursuant to the Confirmed Plan. (*Id.* at 2).

14 In addition to these mortgage accounts, Plaintiffs collectively contest their Wells Fargo
15 Judgment (the "Judgment"). Specifically, in a case related to the Big Sky property, Wells
16 Fargo obtained a default judgment against Plaintiffs for \$328,681.25 for judicial foreclosure
17 and the right to a deficiency judgment against Plaintiffs in the event the sale proceeds did not
18 satisfy the payment obligations. (Ex. 7 to Mrs. Florence's MSJ, ECF No. 163-8); (Ex. 8 to Mrs.
19 Florence's MSJ, ECF No. 163-9). Plaintiffs only became aware of the Judgment in November
20 2015. (Decl. of Mrs. Florence ¶ 4, Ex. B to Mrs. Florence's MSJ, No. 163-2).

21 On January 24, 2014, the bankruptcy court entered its order discharging Plaintiffs from
22 their Confirmed Plan (the "Discharge"). (Ex. 9 to Mrs. Florence's MSJ, ECF No. 163-10).

23 On September 30, 2015, Plaintiffs received their consumer reports from Experian, where
24 they noticed "several apparent inaccuracies." (Mrs. Florence's MSJ 5:8–11); (Ex. 10 to Mrs.
25 Florence's MSJ, ECF No. 163-11). On November 9, 2015 Plaintiffs sent Experian notices of

1 their disputes concerning these inaccuracies. (Decl. of Mrs. Florence ¶¶ 5–10, Ex. B to Mrs.
2 Florence’s MSJ).

3 Specifically, Plaintiffs disputed their mortgage accounts appearing on the consumer
4 report because they argued that these accounts were discharged through their bankruptcy. (Mrs.
5 Florence’s MSJ 5:20–6:18). Plaintiffs contested the Judgment as well because Plaintiffs argue
6 that the Judgment was obtained in violation of the automatic stay placed on the account due to
7 the bankruptcy. (Mrs. Florence’s MSJ 5:20–6:18).

8 After Plaintiffs contacted Experian and Experian conducted four reinvestigations,
9 Experian updated the Shellpoint account to “indicate that Plaintiff[s] included the Shellpoint
10 Account in [their] Chapter 13 Bankruptcy,” (*see, e.g.*, Mrs. Florence’s MSJ 8:7–8), Experian
11 updated the SPS account to “Discharged through Bankruptcy Chapter 13,” (Experian’s First
12 MSJ 6:9–10), and Experian updated the Cenlar account to “closed” for April 2012, (Mrs.
13 Florence’s MSJ 14:2–3). For the Judgment, Experian updated the amount in dispute and did
14 not remove the Judgment from the report until the third reinvestigation, where Experian deleted
15 the Judgment from Plaintiffs’ file pursuant to a request on behalf of Plaintiffs from the reseller
16 Credit Information Systems. (Mrs. Florence’s MSJ 14:8–15).

17 Mrs. Florence filed suit under the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §
18 1681 *et seq.*, on March 16, 2016, and Mr. Florence filed an almost identical suit on March 30,
19 2016. (Mrs. Florence’s Compl., ECF No. 1); (Mr. Florence’s Compl., 2:16-cv-0692-GMN-
20 NJK, ECF No. 1). Both Complaints list a single cause of action for “Violation of the Fair
21 Credit Reporting Act.” (*See* Plaintiffs’ Compls.); *see also* 15 U.S.C. § 1681 *et seq.* The cases
22 were consolidated on November 17, 2016.
23
24
25

1 On May 18, 2017, Plaintiffs filed separately their Motions for Summary Judgment
2 seeking partial summary judgment against Experian as to liability only.² (See Pls.’ MSJs, ECF
3 Nos. 161, 162, 163, 164). On May 19, 2017, Experian filed Motions for Summary Judgment
4 against Plaintiffs seeking summary judgment on the § 1681i claim asserted against it. (See
5 Experian’s MSJs, ECF Nos. 171, 172).

6 **II. LEGAL STANDARD**

7 The Federal Rules of Civil Procedure provide for summary adjudication when the
8 pleadings, depositions, answers to interrogatories, and admissions on file, together with the
9 affidavits, if any, show that “there is no genuine dispute as to any material fact and the movant
10 is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those that
11 may affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
12 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable
13 jury to return a verdict for the nonmoving party. *See id.* “Summary judgment is inappropriate if
14 reasonable jurors, drawing all inferences in favor of the nonmoving party, could return a verdict
15 in the nonmoving party’s favor.” *Diaz v. Eagle Produce Ltd. P’ship*, 521 F.3d 1201, 1207 (9th
16 Cir. 2008) (citing *United States v. Shumway*, 199 F.3d 1093, 1103–04 (9th Cir. 1999)). A
17 principal purpose of summary judgment is “to isolate and dispose of factually unsupported
18 claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

19 In determining summary judgment, a court applies a burden-shifting analysis. “When
20 the party moving for summary judgment would bear the burden of proof at trial, it must come
21 forward with evidence which would entitle it to a directed verdict if the evidence went
22 uncontroverted at trial. In such a case, the moving party has the initial burden of establishing
23 the absence of a genuine issue of fact on each issue material to its case.” *C.A.R. Transp.*

24
25 ² Plaintiffs only seek summary judgment on liability because Plaintiffs believe that “calculation of [their]
damages is best decided by a jury of [their] peers.” (Mrs. Florence’s MSJ 2:4–5).

1 *Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted). In
2 contrast, when the nonmoving party bears the burden of proving the claim or defense, the
3 moving party can meet its burden in two ways: (1) by presenting evidence to negate an
4 essential element of the nonmoving party's case; or (2) by demonstrating that the nonmoving
5 party failed to make a showing sufficient to establish an element essential to that party's case
6 on which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–
7 24. If the moving party fails to meet its initial burden, summary judgment must be denied and
8 the court need not consider the nonmoving party's evidence. *See Adickes v. S.H. Kress & Co.*,
9 398 U.S. 144, 159–60 (1970).

10 If the moving party satisfies its initial burden, the burden then shifts to the opposing
11 party to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v.*
12 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute,
13 the opposing party need not establish a material issue of fact conclusively in its favor. It is
14 sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the
15 parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*
16 *Ass’n*, 809 F.2d 626, 631 (9th Cir. 1987). In other words, the nonmoving party cannot avoid
17 summary judgment by relying solely on conclusory allegations that are unsupported by factual
18 data. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go
19 beyond the assertions and allegations of the pleadings and set forth specific facts by producing
20 competent evidence that shows a genuine issue for trial. *See Celotex Corp.*, 477 U.S. at 324.

21 At summary judgment, a court’s function is not to weigh the evidence and determine the
22 truth but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249.
23 The evidence of the nonmovant is “to be believed, and all justifiable inferences are to be drawn
24 in his favor.” *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is
25 not significantly probative, summary judgment may be granted. *See id.* at 249–50.

1 **III. DISCUSSION**

2 The FCRA was enacted to ensure that CRAs adopt reasonable procedures to meet the
3 needs of commerce that also fairly and equitably provide for confidentiality, accuracy,
4 relevancy, and proper utilization of consumer information. 15 U.S.C. § 1681(b). Under
5 § 1618i-a(1), after receiving notice of a dispute from a consumer, a CRA must “conduct a
6 reasonable reinvestigation to determine whether the disputed information is inaccurate and
7 record the current status of the disputed information.” 15 U.S.C. § 1618i-a(1). Moreover, the
8 FCRA expressly creates a private right of action against a CRA for its negligent or willful
9 noncompliance with this requirement. 15 U.S.C. §§ 1681n, 1681o; *Gorman v. Wolpoff &*
10 *Abramson LLP*, 584 F.3d 1147, 1154 (9th Cir. 2009).

11 Plaintiffs allege that Experian violated 15 U.S.C. § 1681i “for failure to conduct a
12 reasonable reinvestigation.”³ (Mrs. Florence’s MSJ 18:1–2). Pursuant to § 1681i, a CRA must
13 reasonably reinvestigate an item in a consumer’s credit file once the consumer directly notifies
14 the agency of a possible inaccuracy. 15 U.S.C. § 1681i(a)(1)(A). This provision also requires a
15 CRA to review and consider all relevant information submitted by the consumer, § 1681i(a)(4),
16 and promptly provide the credit-grantor of the disputed item with all relevant information
17 regarding the dispute, § 1681i(a)(2)(B). In the event the reinvestigation discovers that the
18 reported information is inaccurate, incomplete, or unverifiable, the CRA must promptly delete
19 or modify the information as appropriate. § 1681i(a)(5)(A).

20 Because the parties here have each filed Motions for Summary Judgment, “[e]ach
21 motion must be considered on its own merits.” *Fair Hous. Council of Riverside Cty., Inc. v.*
22 *Riverside Two*, 249 F.3d 1132, 1136 (9th Cir.2001). “In fulfilling its duty to review each cross-
23 motion separately, the court must review the evidence submitted in support of each cross-
24

25 ³ Although Plaintiffs’ Complaints allege violations of § U.S.C. 1681s-2(b), the subsections other than § 1681i
“do[] not impose any duty, nor [do they] create any cause of action, against a CRA.” See *Gorman*, 584 F.3d at
1154.

1 motion.” *Id.* As such, the Court will first address Mrs. Florence’s Motion for Summary
2 Judgment, (ECF Nos. 163, 164), then address Mr. Florence’s Motion for Summary Judgment,
3 (ECF Nos. 161, 162), and then turn to Experian’s Motions for Summary Judgment, (ECF Nos.
4 171, 172).

5 **A. Mrs. Florence’s Motion for Summary Judgment**

6 Mrs. Florence seeks partial summary judgment on Experian’s “liability for inaccurately
7 reporting information on Plaintiff’s consumer report” pursuant to § 1681i. (*See* Mrs. Florence’s
8 MSJ 2:2–3). To succeed on a § 1681i claim, a plaintiff must show that: (1) plaintiff’s credit file
9 contains inaccurate or incomplete information; (2) plaintiff notified the credit reporting agency
10 directly of the inaccurate or incomplete information; (3) plaintiff’s dispute is not frivolous or
11 irrelevant; (4) the CRA failed to respond to plaintiff’s dispute; (5) the failure to reinvestigate
12 caused plaintiff to suffer damages; and (6) actual damages, such as damages caused by
13 humiliation, mental distress, or injury to reputation or creditworthiness, resulted to plaintiff.
14 *Carvalho v. Equifax Info. Servs., LLC*, 588 F. Supp. 2d 1089, 1095 (N.D. Cal. 2008), *aff’d*, 629
15 F.3d 876 (9th Cir. 2010); (Mrs. Florence’s MSJ 25:21–26:2); (Resp. 8:21–9:2).

16 The outcome of these Motions turns on the issue of whether Plaintiffs’ credit reports
17 were accurate within the meaning of the FCRA. *Carvalho*, 588 F. Supp. 2d at 1095. The
18 remaining issues—whether Experian’s reporting and reinvestigation procedures were
19 reasonable—are typically jury questions inappropriate for resolution on a motion for summary
20 judgment. *See Gauci v. Citi Mortg.*, No. 2:11-cv-01387-ODW, 2012 WL 1535654, at *4 (C.D.
21 Cal. Apr. 30, 2012). Accordingly, the Court first considers whether Plaintiffs’ credit reports
22 were accurate under the FCRA.

23 In the Ninth Circuit, a plaintiff must preliminarily show that an inaccuracy existed in her
24 credit reports. *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 890 (9th Cir. 2010)
25 (holding that although the FCRA’s reinvestigation provision “does not on its face require that

1 an actual inaccuracy exist for a plaintiff to state a claim, many courts, including our own, have
2 imposed such a requirement”); *see Dennis v. BEH-1, LLC*, 520 F.3d 1066, 1069 (9th Cir.
3 2008). In fact, the Ninth Circuit has held in an unpublished opinion that FCRA violations
4 under § 1681 generally require a prima facie showing of inaccuracy. *See Kruse v. Experian*
5 *Information Solutions, Inc.*, 471 Fed. Appx. 714, 715 (9th Cir. 2012) (“Summary judgment was
6 properly granted in favor of Experian because Kruse has not shown any inaccuracies in his
7 credit report, as is required to maintain an FCRA claim.”). Moreover, “credit reports are
8 considered accurate under the FCRA where the credit reporting agencies correctly report
9 information furnished by the creditor, even when there is a pending legal dispute between
10 plaintiff and creditor as to the validity of the debt.” *Gauci v. Citi Mortg.*, No. 2:11-cv-01387-
11 ODW, 2012 WL 1535654, at *5 (C.D. Cal. Apr. 30, 2012).

12 An item on a credit report can be inaccurate “because it is patently incorrect, or because
13 it is [materially] misleading in such a way and to such an extent that it can be expected to
14 adversely affect credit decisions.” *Carvalho*, 629 F.3d at 890. In regards to a bankruptcy, the
15 provisions of a confirmed bankruptcy plan “bind the debtor and each creditor, whether or not
16 the claim of such creditor is provided for by the plan, and whether or not such creditor has
17 objected to, has accepted, or has rejected the plan.” 11 U.S.C. § 1327.

18 The FCRA, however, does not impose strict liability on CRAs for reporting inaccurate
19 information. *See Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995).
20 Because of this, CRAs are not liable for failing to reinvestigate alleged inaccuracies of which
21 they have no notice. *See, e.g., Casella v. Equifax Credit Information Services*, 56 F.3d 469, 474
22 (2d Cir. 1995) (“Prior to being notified by consumer, a credit reporting agency generally has no
23 duty to reinvestigate credit information.”); *Johnson v. Wells Fargo Home Mortg., Inc.*, 558 F.
24 Supp. 2d 1114, 1135–36 (D. Nev. 2008) (explaining that “no violation” of the duty to properly
25 reinvestigate “can occur until after the 30-day deadline for completing a proper reinvestigation

1 has expired”); *see Gauci v. Citi Mortg.*, 2012 WL 1535654, at *4 (C.D. Cal. Apr. 30, 2012)
2 (“When the plaintiff fails to establish an actual inaccuracy, courts may properly grant summary
3 judgment in favor of credit reporting agency defendants.”).

4 As a court stated in this District, “[t]he [c]ourt was unaware of any statute or case
5 providing that discharge in bankruptcy makes a debt unreportable as opposed to uncollectable.”
6 *Abeyta v. Bank of Am.*, No. 2:15-cv-02320-RCJ-NJK, 2016 WL 1298109, at *2 (D. Nev. Mar.
7 31, 2016). “The fact that Congress explicitly permits bankruptcies themselves to be reported for
8 ten years from the date of discharge, *see* 15 U.S.C. § 1681c(a)(1), undermines any argument
9 that Congress intended specific debts discharged in bankruptcy to be categorically
10 unreportable.” *Id.* Moreover, “the details of such debts are listed in the publicly available
11 bankruptcy schedules.” *Id.* The court concluded that because the FCRA does not prevent the
12 reporting of delinquencies as to discharged debts for seven years and bankruptcies for ten years,
13 “Congress has thereby chosen a balance between rescuing consumers from overwhelming debt
14 by providing a discharge mechanism and protecting potential creditors going forward by
15 permitting the reporting of delinquencies concerning the discharged debt, as well as the fact of
16 bankruptcy itself, for the relevant periods.” *Id.*

17 Here, Mrs. Florence argues that “the Shellpoint and SPS Accounts were both subject to
18 the controlling terms of . . . [the] Confirmed Plan, thus any derogatory information reported . . .
19 after the petition date could only be reported if at all, if [Mrs. Florence] failed to meet her
20 obligations under the [Confirmed] Plan.” (Mrs. Florence’s MSJ 20:20–23). Mrs. Florence
21 continues, “[t]he undisputed facts establish that both [Shellpoint and SPS] were paid under the
22 [C]onfirmed Plan.” (Mrs. Florence’s MSJ 21:4–5). Experian argues, however, that because the
23 information reported occurred before the Discharge, Mrs. Florence cannot establish any
24 inaccuracy. (Resp. 2:5, ECF No. 165).

1 Although the Bankruptcy Code prevents certain collection activities, it does not alter the
2 fact of delinquency. Essentially, “the FCRA does not prohibit the accurate reporting, after
3 discharge, of debts that were delinquent during the pendency of the bankruptcy action.”
4 *Mortimer v. Bank of Am.*, 2013 WL 1501452, at *10 (N.D. Cal. Apr. 10, 2013). Although Mrs.
5 Florence alleges that the Confirmed Plan and the Discharge could be rereported only if she
6 “failed to meet her obligations under the [Confirmed] Plan,” it does not render the reports in
7 their prior delinquency false in-and-of-themselves. *See Abeyta*, 2016 WL 1298109, at *2; *see*.
8 *e.g., Polvorosa v. Allied Collection Serv., Inc.*, No. 2:16-cv-1508-JCM-CWH, 2017 WL
9 29331, at *3 (D. Nev. Jan. 3, 2017) (“[R]eporting delinquencies during the pendency of a
10 bankruptcy or during a bankruptcy’s automatic stay is not itself a violation of the FCRA.”);
11 *Doster v. Experian Info. Sols., Inc.*, No. 16-cv-04629-LHK, 2017 WL 264401, at *4 (N.D. Cal.
12 Jan. 20, 2017) (“[A]s a matter of law it is not misleading or inaccurate to report a delinquent
13 debt during the pendency of a bankruptcy.”).

14 Mrs. Florence asserts that Experian continued to rereport monthly account balances and
15 scheduled payments “for the period of March 2014 through September 2015,” after the
16 Discharge. (Mrs. Florence’s MSJ 21:5–7). However, “historically accurate debts may be
17 reported even after discharge, so long as the credit report indicates that the debts were
18 discharged in bankruptcy.” *Harris v. Experian Info. Sols., Inc.*, No. 16-cv-02162-BLF, 2017
19 WL 1354778, at *6 (N.D. Cal. Apr. 13, 2017); *see Mortimer*, 2013 WL 1501452, at *9–11
20 (holding that the furnisher’s reporting that the debt had been delinquent during the pendency of
21 the bankruptcy was historically accurate and thus not actionable under the FCRA where report
22 also indicated that the debt had been discharged in bankruptcy). Once Mrs. Florence notified
23 Experian that these debts were remedied by the Confirmed Plan and Discharge, and Experian
24 concluded its reinvestigations, Experian updated the Shellpoint and SPS accounts to state
25 “Discharged through Bankruptcy Chapter 13.” (December 10, 2015 Consumer Disclosure at 6,

1 Ex. E to Resp., ECF No. 165-5). Because the actual existence of these debts were not patently
2 false, and Experian ultimately updated the reports to state that they were discharged, the Court
3 denies summary judgment on the Shellpoint and SPS accounts.⁴ *See Abeyta v. Bank of Am.*,
4 2016 WL 1298109, at *2.

5 In addition to the mortgage accounts, Mrs. Florence contests the reporting of the
6 Judgment because “Wells Fargo did move successfully to lift the automatic stay, but did not
7 receive any right to proceed against [Mrs. Florence] personally.” (Mrs. Florence’s MSJ 24:7–
8 8). Mrs. Florence continues, “[a]ccordingly, the Judgment was void *ab initio*, and although
9 Wells Fargo obtained a judgment, it was materially misleading to rereport it against the
10 backdrop of the fact that Wells Fargo obtained it in violation of the stay.” (*Id.* 24:9–11).

11 However, “[w]ith respect to the accuracy of disputed information, the CRA is a third
12 party, lacking any direct relationship with the consumer, and its responsibility is to ‘re-
13 investigate’ a matter once already investigated in the first place.” *Gorman*, 584 F.3d at 1157
14 (quoting 15 U.S.C. § 1681i(a)(1)). Hence, a consumer disputing the legal validity of a debt that
15 appears on her credit report should generally first attempt to resolve the matter directly with the
16 creditor, furnisher, or source of the debt, which “stands in a far better position to make a
17 thorough investigation of a disputed debt than the CRA does on reinvestigation.” *See id.* at
18 1156.

19 Moreover, a CRA is not required as part of its reinvestigation duties to provide a legal
20 opinion on the merits. *Carvalho*, 629 F.3d at 892. Indeed, determining whether the consumer
21 has a valid defense “is a question for a court to resolve in a suit against the [creditor,] not a job
22

23 ⁴ As to the Cenlar Account, Mrs. Florence fails to allege in her Motion for Summary Judgment that an
24 inaccuracy existed and, in fact, states “Experian appeared to correct the payment history by deleting the post-
25 petition derogatory reporting and reporting instead only ‘closed’ for April 2012.” (Mrs. Florence’s MSJ 14:1–3). Pursuant to this, the Court construes Mrs. Florence’s claim against Experian concerning Cenlar dismissed.

1 imposed upon consumer reporting agencies by the FCRA.” *Id.* Nor is a CRA obligated not to
2 report any information about the disputed item simply because the consumer asserts a legal
3 defense. *Id.* “[T]he very economic purpose for credit reporting companies would be
4 significantly vitiated if they shaded every credit history in their files in the best possible light
5 for the consumer.” *Cahlin v. Gen. Motors Acceptance Corp.*, 936 F.2d 1151, 1158 (11th Cir.
6 1991).

7 Here, Mrs. Florence’s allegations against Experian regarding the Judgment center
8 around Mrs. Florence contesting the validity of the Judgment appearing on the report—an issue
9 Experian has no control over as it is an issue with a court. Mrs. Florence demonstrates this in
10 her Motion where she asserts that Wells Fargo obtained the judgment in violation of the
11 bankruptcy stay. (Mrs. Florence’s MSJ 24:9–11). Experian, however, is not mandated by the
12 FCRA to investigate the validity of the court-entered judgment as it “is a question for a court to
13 resolve in a suit . . . not a job imposed upon consumer reporting agencies by the FCRA.”
14 *Carvalho*, 629 F.3d at 892. Ultimately, as Mrs. Florence acknowledges in her Reply,
15 “Experian removed the ‘satisfied’ Judgment from [Mrs. Florence’s] credit report” on March 29,
16 2016. (Mrs. Florence’s Reply 8:7–8). As such, Experian cannot be found liable for reporting
17 the Judgment as the existence of the Judgment was not inaccurate, and the Court therefore
18 denies summary judgment as to this issue.

19 Finally, Mrs. Florence argues that “Experian rereported materially misleading
20 information in the payment history fields for the Shellpoint and SPS [accounts] because of its
21 failure to conform to the 2015 Metro 2.” (Mrs. Florence’s MSJ 22:1–2). Courts in this Circuit
22 hold, however, that “accurately reporting a delinquent debt during the pendency of a
23 bankruptcy is not rendered unlawful simply because a plaintiff alleges that the reporting,
24 though accurate, was inconsistent with industry standards.” *Doster v. Experian Info. Sols., Inc.*,
25 No. 16-cv-04629-LHK, 2017 WL 264401, at *5 (N.D. Cal. Jan. 20, 2017); *Mortimer*, 2013 WL

1 1501452, at *12 (“To the extent that the account was delinquent during the pendency of the
2 bankruptcy, failure to comply with the CDIA guidelines does not render the report incorrect.”).
3 Thus, the Court finds that, as a matter of law, it is not misleading or inaccurate to report a
4 delinquent debt that occurred during the pendency of a bankruptcy, and that the industry
5 guidelines—such as Metro 2—do not establish the standards for accuracy under the FCRA.
6 Because Mrs. Florence fails to prove that the reports on the mortgage accounts and the
7 Judgment contained inaccurate information, which precludes the § 1681i analysis from
8 proceeding, the Court denies Mrs. Florence’s Motion for Summary Judgment.

9 **B. Mr. Florence’s Motion for Summary Judgment**

10 Mr. Florence’s Motion for Summary Judgment reasserts the same infractions as Mrs.
11 Florence’s.⁵ (*See generally* Mr. Florence’s MSJ, ECF No. 161). Specifically, Mr. Florence
12 asserts inaccuracies with the mortgage accounts and the Judgment. (*Id.*). Because the
13 arguments regarding the Judgment are identical to Mrs. Florence’s, the Court, as discussed
14 *supra*, denies summary judgment on Experian’s reporting of the Judgment. Additionally,
15 because the Shellpoint and SPS accounts are the identical accounts that Mrs. Florence seeks
16 summary judgment for, the Court denies summary judgment pursuant to its analysis *supra*.

17 As to Cenlar, however, the Court did not address summary judgment with Mrs. Florence
18 as she forewent seeking summary judgment for the Cenlar account. In the instant Motion, Mr.
19 Florence argues that “the Cenlar account was included in [Mr. Florence’s] bankruptcy,
20 and . . . Experian failed to process the Cenlar Tradeline altogether, and simply continued
21 reporting the tradeline and its patently incorrect 180-day past due payment history for nine
22 months following [Mr. Florence’s] [P]etition date.” (Mr. Florence’s MSJ 19:17–21). However,

23
24 ⁵ Although Mr. Florence’s Motion includes headlines stating “The undisputed facts establish that Experian
25 rereported inaccurate information on Plaintiff’s Ocwen and OneWest Tradelines” and “Experian reported
patently incorrect information on the Ocwen and OneWest Tradelines,” Plaintiff then fails to address the Ocwen
and OneWest Tradelines and instead addresses the Shellpoint, SPS, and Cenlar accounts. (Mr. Florence’s MSJ
17:10–13, 18:20). As such, the Court will not address the Ocwen and OneWest Tradelines.

1 as discussed *supra*, “the FCRA does not prohibit the accurate reporting, after discharge, of
2 debts that were delinquent during the pendency of the bankruptcy action.” *Mortimer v. Bank of*
3 *Am.*, 2013 WL 1501452, at *10 (N.D. Cal. Apr. 10, 2013). Because the Cenlar accounts
4 detailed delinquencies in 2012, before the eventual remedy from the Confirmed Plan and the
5 Discharge, Experian did not report inaccurate information. Accordingly, the Court denies
6 summary judgment on Experian’s liability for the Cenlar account and denies Mr. Florence’s
7 Motion for Partial Summary Judgment.⁶

8 **C. Experian’s Motions for Summary Judgment**

9 Experian filed Motions for Summary Judgment against both Mrs. Florence and Mr.
10 Florence. (ECF Nos. 171, 172). The Court will first address the Motion against Mrs. Florence
11 and will then turn to the Motion against Mr. Florence.

12 ***1. Motion for Summary Judgment against Mrs. Florence***

13 Experian argues that Mrs. Florence “simply cannot establish that any inaccuracy existed
14 in her credit report after Experian’s reinvestigation concluded on December 10, 2015.”
15 (Experian’s First MSJ 10:11–12, ECF No. 171). Experian continues that the mortgage
16 accounts were each “updated to show that [they] had been ‘discharged in bankruptcy,’ which is
17 consistent with [Mrs. Florence’s] representations in the dispute letter.” (Experian’s First MSJ
18 10:21–22). Experian supports this by attaching the updated December 10, 2015 Consumer
19 Disclosure, (*see* Ex. H to Experian’s First MSJ at 9–22, ECF No. 171-4). In the Consumer
20 Disclosure, Experian added comments to each of the mortgage accounts stating that the debt
21 had been “included in Chapter 13 Bankruptcy on Jan. 24, 2014.” (*Id.*).

22 Moreover, Experian states that both the Cenlar and Shellpoint accounts showed no
23 delinquencies after the Bankruptcy Petition date in March 2012, and SPS only showed one
24

25 ⁶ Notably, Mr. Florence’s Complaint asserts violations against Experian regarding a Commonwealth account and a Plusfour account, but Mr. Florence fails to address these accounts in his Motion for Summary Judgment. (*See* Mr. Florence’s Compl. ¶¶ 119–154, 2:16-cv-0692-GMN-NJK, ECF No. 1).

1 delinquency after the Bankruptcy Petition date, but before the discharge. (*Id.*); (Experian’s First
2 MSJ 11:6–15). As the Court holds *supra*, “[t]he fact that Congress explicitly permits
3 bankruptcies themselves to be reported for ten years from the date of discharge, *see* 15 U.S.C. §
4 1681c(a)(1), undermines any argument that Congress intended specific debts discharged in
5 bankruptcy to be categorically unreportable.” *Abeyta*, 2016 WL 1298109, at *2; *see Polvorosa*
6 *v. Allied Collection Serv., Inc.*, No. 2:16–cv–1508-JCM-CWH, 2017 WL 29331, at *3 (D. Nev.
7 Jan. 3, 2017) (“[R]eporting delinquencies during the pendency of a bankruptcy or during a
8 bankruptcy’s automatic stay is not itself a violation of the FCRA.”). Accordingly, Mrs.
9 Florence cannot, as a matter of law, establish an inaccuracy based on the mortgage accounts,
10 and the Court therefore grants summary judgment in Experian’s favor.

11 As to the Judgment, as previously held, a CRA is not required as part of its reporting
12 duties or reinvestigation duties to provide a legal opinion on the merits. *Carvalho*, 629 F.3d at
13 892. Moreover, Mrs. Florence does not dispute that the Judgment was entered against her.
14 (Depo. of Mrs. Florence at 53, Ex. L to Experian’s First MSJ, ECF No. 171-4). Instead, Mrs.
15 Florence responds that “[t]he public record was clear” and that the judgment was “materially
16 misleading to rereport it against the backdrop of the fact that Wells Fargo obtained [the
17 Judgment] in violation of the stay.” (Mrs. Florence’s Resp. 25:6, 25:8–10, ECF No. 173). The
18 Court finds this argument unpersuasive. In light of the Judgment actually being entered and
19 Experian not having a duty to legally investigate the merits of the Judgment in constructing its
20 report, the Court grants summary judgment in Experian’s favor.

21 **2. Motion for Summary Judgment against Mr. Florence**

22 Experian seeks summary judgment against Mr. Florence due to Mr. Florence failing to
23 identify an “inaccuracy in his post-reinvestigation credit disclosure” because “[f]ollowing
24 Experian’s reinvestigation, the three mortgage accounts in dispute all reported no outstanding
25

1 balance, and neither of the collections accounts included in [Mr. Florence's] dispute letter were
2 listed in the bankruptcy schedules." (Experian's Second MSJ 10:4–7).

3 Preliminarily, the mortgage accounts and the Judgment that Experian seeks summary
4 judgment on are the identical accounts that Experian sought summary judgment on against Mrs.
5 Florence. Specifically, the Shellpoint account showed no delinquencies after the Petition date,
6 and the SPS and Cenlar accounts showed delinquencies after the Bankruptcy Petition date, but
7 before the Discharge. (Ex. G to Experian's Second MSJ at 6, 8, ECF No. 172-3). As held
8 *supra*, these reported delinquencies are not inaccuracies. Therefore, the Court grants summary
9 judgment for Experian on these accounts.

10 The only accounts that differ in Mr. Florence's Complaint from Mrs. Florence's are the
11 Plusfour and Commonwealth accounts (collectively the "collections accounts"). (See Mr.
12 Florence's Compl. ¶¶ 119–154, 2:16-cv-0692-GMN-NJK). Experian seeks summary judgment
13 on these collections accounts because in his Complaint, Mr. Florence "does not dispute the
14 existence of these collections debts, but instead insists that they were included in the
15 bankruptcy discharge." (Experian's Second MSJ 12:28–13:1) (citing Ex. F at 4–5 to Experian's
16 Second MSJ, ECF No. 172-3). Moreover, Experian argues that "[n]either a Commonwealth
17 account nor a Plusfour account with the account number [Mr. Florence alleged in his
18 Complaint] was included in the bankruptcy schedules, which lists all creditor claims subject to
19 the bankruptcy." (*Id.* 13:2–4) (citing Ex. B to Experian's Second MSJ, ECF No. 172-2).

20 Mr. Florence fails to address these accounts in his Motion for Summary Judgment or in
21 his Response, (ECF No. 175), and the Court therefore construes these facts as undisputed. *See*
22 Fed. R. Civ. P. 56; *see also Heinemann v. Satterberg*, 731 F.3d 914, 917 (9th Cir. 2013) ("If
23 there is a failure to respond, the Rule 'authorizes the court to consider a fact as undisputed.'").
24 As such, the Court grants summary judgment in Experian's favor.
25

1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that William E. Florence's Motions for Summary
3 Judgment, (ECF Nos. 161, 162), are **DENIED**.


4 **IT IS FURTHER ORDERED** that Regina H. Florence's Motions for Summary
5 Judgment, (ECF Nos. 163, 164) are **DENIED**.

6 **IT IS FURTHER ORDERED** that Experian's Motions for Summary Judgment, (ECF
7 Nos. 171, 172) are **GRANTED**.

8 **IT IS FURTHER ORDERED** that the remaining parties shall submit a joint status
9 report identifying whether there are any non-moot claims remaining in light of this Order. The
10 parties shall have twenty-one days from the date of this Order to file the status report. Failure
11 to do so will result in the Court dismissing the remaining claims and closing the case.

12 The Clerk of the Court shall enter judgment accordingly.

13 **DATED** this 1 day of March, 2018.

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16 _____
17 Gloria M. Navarro, Chief Judge
18 United States District Judge
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